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No. 85-1827

In the Supreme Court of the United States

OCTOBER TERM, 1985

GUY GRIDER,
Petitioner,

vs.

TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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June, 1986

QUESTION PRESENTED

1. Whether denying a litigant the opportunity to visit his own land to conduct pretrial discovery constitutes a denial of that litigant's constitutional right to due process of law?

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i

INTRODUCTION 1

Reply to Respondents' Statement of the Case 2

Reply to Respondents' Reasons for Denying the Writ 5

CONCLUSION 8

CERTIFICATE OF SERVICE follows Reply Brief.

APPENDIX:

Letter from Petitioner to Ratliff Exploration Company (Jan. 4, 1985).

TABLE OF AUTHORITIES

Cases PAGE(S)

Armstrong v. *Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L. Ed.2d 62 (1965) 5

Boddie v. *Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) 5

Fuentes v. *Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed. 2d 556 (1972), *reh. den.*, 409 U.S. 902, 93 S.Ct. 177, 34 L.Ed.2d 165 (1972) 5

Holt v. *Commonwealth of Virginia*, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 270 (1965) 5

Landsey v. *Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed. 2d 36 (1972) 5

United Transportation Union v. *The State Bar of Michigan*, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed.2d 339 (1971) 5

Other Authorities

12 O.S. Supp. 1985, §3203C 7

12 O.S. Supp. 1985, §3211 6

Model Form Operating Agreement, AAPL Form No. 610-1977, Art. VI, §D 3

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INTRODUCTION

On May 5, 1986, Petitioner Guy Grider filed his Petition for Writ of Certiorari in this Court.

In early June, 1986, the Respondents, Texas Oil & Gas Corp. and TXO Production Corp. filed a timely response. The Brief in Opposition to Petition for Writ of Certiorari filed by Respondents attempts to raise numerous facts and legal arguments for the first time. Many of the so-called "facts" are not in the record below. And the facts are presented in a name-calling fashion obviously calculated to inflame (and confuse) this High Court.

Therefore, pursuant to the legal authority of Rule 22.5, Rules of the Supreme Court of the United States, this Reply Brief is submitted by the Petitioner.

The letters in the Appendix of Respondent's Brief in Opposition are incomplete. Therefore, the Appendix attached to this Reply Brief includes the Grider letter of January 4, 1985, to Ratliff Exploration concerning authorization to review Halliburton invoices.

REPLY TO RESPONDENTS' STATEMENT OF THE CASE

Respondents' Statement of the Case is found at pages 2-6 of its Brief. The statement contains numerous inaccuracies.

First, there is absolutely no evidence in the record to substantiate the Respondents' claim that any of the oil wells in question are located in "secured areas in and around Will Rogers Airport." This statement was argued by the Respondents' attorneys below, but no proof was ever put into the record or even offered on these facts. Nor is there any evidence anywhere in the record that Mr. Grider's occasional presence on the lease posed any threat of any nature to airport security or safety. Obviously, any bona fide safety issue would expose the city airport and the municipal trust that manages it to serious liability. The record below does not reflect any attempt by any city representative or airport trust representative to intervene to protect their exposure. Neither the city nor the trust even attempted to intervene because the so-called "security and safety" issue is specious. It is a smoke screen billowed up by the Respondents to disguise the true nature of the Respondents' unlawful activities.

The so-called "secured area" around the airport is "secured" only by words. The leases are located far away from any runways or towers. The leases contain pasture land with wandering horses and cows, wheat pasture, hunters, skeetshooters and softball fields.

Further, when the Respondents' predecessor operated the leases, Mr. Grider received from the prior operator a master key to gain access to the land to view oil and gas operations conducted thereon. No evidence was ever introduced nor was it even alleged that Mr. Grider's previous occasional presence on the lease ever interfered with the operations or posed any danger to airport flights or led to any sabotage or unexplained losses.

Second, the Petitioner already quoted Art. 6, §D, Access to Control Area and Information, contained in the Model Form Operating Agreement signed by Mr. Grider and all working interest owners. The language of the paragraph speaks for itself — "access" must be "at all reasonable times." Obviously, what is "reasonable" depends on the specific facts of any particular case. When crude oil is being trucked 24 hours a day at a value of $10,0000.00 per truckload, an occasional visit by a working interest owner is reasonable.

In the case at bar, Mr. Grider alleges that the operator is engaged in unlawful activities by improper billing and by not giving credit for all hydrocarbons produced and sold. It is therefore totally unreasonable to require Mr. Grider to telephone the operator of the wells in advance in order to visit a lease at a subsequent time and date. Obviously, the operator is alerted to avoid any unlawful

activity in the presence of Mr. Grider. Just as obviously, a police raid would never succeed if the criminals were tipped off in advance as to the date and time of the future police action. For this precise reason, the District Court of Oklahoma County granted Mr. Grider's Motion for Entry Upon Land for Inspection.

Third, Mr. Grider may lawfully refer to the leases in question as "his own land." It is undisputed that Mr. Grider owns an undivided interest in the leases. His interest includes rights to use the land for drilling, setting up tanks, grading roads, etc. It is further undisputed that Mr. Grider paid over $1,000,000.00 for his share of ownership and for his subsequent proportionate share of drilling and production costs. Mr. Grider has an absolute right to enjoy and visit his property at his own expense and risk as sought herein.

Fourth, Mr. Grider's legal remedies are not limited. He may sue on his contract to protect rights which he previously exercised and rights which are granted in the contract itself. If any of Mr. Grider's constitutional rights are vioated he may seek redress from this High Court. Therefore, Mr. Grider filed this Petition seeking to enforce his constitutional right to protect his property by lawful pretrial discovery and to prevent deprivation of his property without due process of law.

REPLY TO RESPONDENTS' REASONS FOR DENYING THE WRIT

In their Brief, the Respondents try to denigrate this case to Mr. Grider merely being denied a key.

But the case does not stop there.

The key in question is tied to bedrock constitutional issues that cannot be ignored. The key in question is Mr. Grider's key to his own property. Mr. Grider wants to use the key to gain access to his property in order to gain evidence for a lawsuit on file. And any trial of that lawsuit is meaningless when a party cannot discover and present all relevant evidence. And this Court has correctly stated many times that a "meaningless" trial violates every tenet of procedural due process of law. *Fuentes* v. *Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), *rehearing denied* 409 U.S. 902, 93 S.Ct. 177, 34 L.Ed.2d 165 (1972); *Armstrong* v. *Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965); *Boddie* v. *Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *Landsey* v. *Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 366 (1972), and *Holt* v. *Commonwealth of Virginia*, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 270 (1965). Any "meaningless" trial or hearing renders the bedrock constitutional guarantee of due process of law into a "hollow promise", *United Transportation Union* v. *The State Bar of Michigan*, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed.2d 339 (1971).

The *key* to Mr. Grider's problem is the Respondent's breach of contract. Respondent is deliberately obscuring the issue of the Petitioner's property rights to oil and gas produced. Each molecule of hydrocarbon the Respondent

produces is accountable to not only the Petitioner, but to other working interest owners, royalty owners, the State of Oklahoma (gross production tax) and the United States of America (windfall profit tax).

The Petitioner herein, Mr. Grider, is not served by hiring a "pumper" or other technical experts to visit the lease. This claim by the Respondents is ridiculous. These professionals cannot perform their services standing on a public road looking over the fence to a distant oil well. These experts must also have access to the property. And obviously these representatives cannot gain access to the property without the same advance warning to the Respondents. And just as advance warning would render any visit by Mr. Grider meaningless, advance warning would also render meaningless any visit by a pumper or any other expert.

Finally, the Respondents argue (predictably) that Petitioner's request from this Court would "mean virtual chaos" in the judicial system and in the oil and gas industry in general. Such a notion is ludicrous.

Mr. Grider herein merely seeks occasional access to his own lease, at his own risk and expense, to view what transpires. It is the same practice he and other working interest owners previously enjoyed on this lease. Such access is authorized in the Operating Agreement. It is specifically provided in the Oklahoma Discovery Code, 12 O.S. Supp. 1985, §3211. If there was ever any evidence these occasional visits caused some public danger or damage (instead of the operator's present speculation) then the op-

erator could seek an appropriate protective order, 12 O.S. Supp. 1985, §3203C. With the unique facts of this case, where there are allegations that the well operator engaged in fraudulent billing practices and underpayment for proceeds of hydrocarbons, such access by the Petitioner is crucial. Evidence of these actions by the operator will not be available if Mr. Grider must telephone in advance and thereby warn the operator of the date and time of his subsequent visit. Obviously, by the time of Mr. Grider's belated and well-advertised arrival, all evidence would disappear.

Further, Petitioner wonders if the "chaos" the Respondent is really concerned about is that which would occur when the "passive, non-industry investors in oil and gas operations nationwide" seek the truth about operation of their leases? Certainly seeking honest answers does not threaten chaos.

Any attempt at pretrial discovery by the Petitioner under these limitations is useless. And any trial that occurs after pretrial discovery is totally hamstrung is utterly meaningless.

It is to address the decision of the Oklahoma Supreme Court that deprived Mr. Grider of his ability to protect his property by lawful pretrial discovery and that deprived him of his property without due process of law, that this Petition for Writ of Certiorari is submitted.

With the Respondent in breach of contract, to deny simple pretrial discovery rights to the Petitioner and to allow the Respondent to continue unabated his unlawful conduct is candidly an absurdity.

CONCLUSION

For the foregoing reasons and authorities cited therefor, Guy Grider prays that his Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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(405) 840-3741

Attorney for Petitioner
Guy Grider

June, 1986

CERTIFICATE OF SERVICE

This is to certify that on this ____ day of June, 1986, pursuant to Rule 28 of the Rules of the Supreme Court, three (3) true and correct copies of this Reply Brief in Support of Petition for a Writ of Certiorari to the Supreme Court of Oklahoma, were served on parties required to be served under the provisions of Rule 28 by placing them in the U.S. Mail, with postage fully prepaid, as follows:

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DANIEL J. GAMINO

APPENDIX

RATLIFF .0031

January 4, 1985

Ratliff Exploration Company
Attn: Ralph Lamb
First Oklahoma Tower
210 West Park Avenue, Suite 1950
Oklahoma City, OK 73102

SUBJECT: REQUEST FOR AUTHORIZATION TO REVIEW HALLIBURTON INVOICES

As a result of recent audits of well completion charges, it has become quite evident and necessary to review actual billing statement/invoices to verify these records for accuracy of costs. It is requested that your company permit Guy Grider Enterprises to review all invoices relating to charges incurred in the drilling and completion of wells on the Airport Trust and the Wheatland Prospect. Any discrepancies found will be provided you and to the working interest owner group [participating non-operators].

This authorization should be in writing with a copy going to Halliburton Service Division, Attn: General Credit Manager, Duncan, Oklahoma and to the Oklahoma City office.

Attachment 1 contains the listing of the wells in question. If your company cannot or chooses not to permit this review, notify us in writing. In either case, we would prefer your answer back by registered mail no later than January 10, 1985.

Sincerely,

Guy Grider